

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Robert, Kermit & Kristin Ziegmann d/b/a
Ziegmann Brothers

ADMINISTRATIVE
CONSENT ORDER
NO. 2010-AFO- 52

TO: Robert, Kermit & Kristin
Ziegmann
3115 Fox Ave.
Odebolt, IA 51458

Robert, Kermit & Kristin
Ziegmann
3740 B. Ave.
Breda, IA 51436

Robert & Kristin Ziegmann
611 N Main St
PO Box 368
Wall Lake, IA 51466

Kermit Ziegmann
2320 39th St.
Wall Lake, IA 51466

*Correct
Addresses*

*Incorrect
Mailing
Addresses
Delayed in
USPS Mail*

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Robert Ziegmann, Kermit Ziegmann, and Kristin Ziegmann (collectively referred to as Ziegmann Brothers) and the Iowa Department of Natural Resources (Department). Ziegmann Brothers hereby agree to pay a penalty in the amount of \$5,000.00 and cease all illegal discharges to waters of the State.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Thad Nanfite
IDNR Field Office #4
1401 Sunnyside Lane
Atlantic, IA 50022
Ph: 712/243-1934

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, or Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Ziegmann Brothers own and or operate an open feedlot which has a capacity of 850 animal units. The manure at this location is stored in a manure settling pond and the liquids are discharged through an outlet in the control basin. The facility is located in the SE 1/4 of the SW 1/4 of Section 3, T85N, R37W, Crawford County Iowa, which is locally known as 3740 B. Ave, Breda.
2. On January 26, 2007, Thad Nanfito, Department Field Office 4 environmental specialist, conducted an open feedlot assessment of the Ziegmann Brothers operation. This inspection was to serve two purposes: 1) suggest temporary measures that could be taken to prevent or reduce the potential of pollution and 2) inform the Ziegmann Brothers of the steps necessary to bring the facility into compliance with current Iowa law. On February 6, 2007, the Department sent a letter to the Ziegmann Brothers which summarized the Department's conclusions. The letter stated that because of the proximity of the open feedlot to a nearby stream, additional manure controls were necessary to prevent the discharge of manure solids and liquids during a precipitation event. The Department recommended that Ziegmann Brothers contact the U.S. Department of Agriculture Natural Resources Conservation Services (NRCS) or Iowa State University (ISU) extension for assistance in developing a plan to establish the necessary controls to avoid an unauthorized discharge to a water of the state. Further, the Department advised that a new solids settling structure would assist in controlling manure and therefore, improve water quality of the nearby stream. The Department asked that a Plan of Action (POA) be developed and submitted to the Department by May 1, 2007, and that written notification of

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the completion of manure control be submitted to the Department by November 1, 2007.

3. On September 18, 2007, Mr. Nanfito conducted a follow-up visit. He observed that a clean water diversion terrace had been constructed on the east side of the basin to prevent runoff from entering the basin. On September 26, 2007, the Department sent another letter to the Ziegmann Brothers stating its concern that during rain events it is likely manure liquids will reach Beaman Creek (a water of the state). The Department further encouraged the Ziegmann Brothers to work towards implementation of a proper POA which must address manure storage.

4. On November 1, 2007, Ziegmann Brother submitted a POA to the Department.

5. On November 2, 2007, the Department left a voicemail with Ziegmann Brothers informing them that the Department received the POA and they should consult with NRCS or ISU extension staff.

6. On November 28, 2007, the Department sent a letter to Ziegmann Brothers requesting that they consult with either the NRCS or ISU extension staff regarding the POA.

7. On September 16, 2009, Thad Nanfito conducted a follow-up visit to determine whether the facility was in compliance with its POA. Following this inspection, on September 29, 2009, a letter was sent to Ziegmann Brothers which suggested that they land apply manure liquids to avoid a water quality violation. In addition, they were told to contact ISU Extension's Kris Kohl for assistance with implementation of the POA.

8. On March 9, 2010, Thad Nanfito conducted an inspection of Ziegmann Brothers' open feedlot. During the inspection he observed manure flowing from Ziegmann Brothers' open lot to Beaman Creek. Laboratory samples testing for the following pollutants were taken: fecal coliform, E. coli, ammonia, Nitrogen, Total Suspended Solids (TSS), and total biological oxygen demand five day (Total BOD 5 day). The samples were sent to the University of Iowa Hygienic Laboratory for analysis and the results are below:

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	Fecal Coliform (MPN/100mL)	E coli. (MPN/100mL)	Ammonia Nitrogen	Total Kjeldhal Nitrogen	TSS	Total BOD (5 Day)	Temp
Site # 1 (Upstream of discharge point)	270000	270000	13 mg/L	52 mg/L	300 mg/L	23 mg/L	35 F
Site #2 (at point of discharge)	1900000	2600000	190 mg/L	340 mg/L	2100 mg/L	20000 mg/L	37 F
Site #3 (downstream of discharge point)	90000	90000	11 mg/L	20 mg/L	380 mg/L	87 mg/L	35 F

9. On June 7, 2010, the Department sent a Notice of Violation letter to Ziegmann Brothers for an unauthorized discharge to a water of the state and water quality violations. This letter also informed Ziegmann Brothers that the matter was being referred to the Department's Legal Services Bureau for further enforcement.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. A permit has not been issued for this facility; therefore, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards relating to the operation and construction of animal feeding operations and the conditions under which the Department shall issue permits to such operations, and relating to the disposal of manure resulting from animal feeding operations. The Commission has done so at 567 IAC Chapters 60-65. Chapter 65, in particular, relates to animal feeding operations.

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3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The above facts indicate a violation of one or more of these criteria.

V. ORDER

THEREFORE, the Department hereby orders and Ziegmann Brothers consent to do the following:

1. By November 1, 2010, Ziegmann Brothers shall submit an evaluation prepared by a professional engineer licensed in the state of Iowa. The evaluation shall address whether the design of the current manure control structures meet the Department's requirements set forth in 567 IAC 65.101 and 567 IAC 61.3(2). This evaluation shall also address what remedial actions are necessary.
2. Ziegmann Brothers shall cease all illegal discharges to waters of the State;
3. Ziegmann Brothers shall complete all actions included in the professional engineer's evaluation submitted in paragraph 1, above, by December 1, 2010; and
4. Ziegmann Brothers shall pay a penalty in the amount of \$5,000.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient

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means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

- a. Economic Benefit. Ziegmann Brothers saved a significant amount of money by delaying construction of sufficient manure controls. The delay of spending allowed the Ziegmann Brothers to earn interest on the money that should have been spent on manure controls. In addition manure is a byproduct of Ziegmann Brothers cattle operation; they have gained an advantage against competitors by not properly disposing of this waste. The Department estimates that Ziegmann Brothers saved a significant amount of money by failing to properly dispose of the manure; however, in an effort to settle this case \$1,000.00 is assessed for this factor.
- b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Despite numerous notifications by the Department, Ziegmann Brothers failed to install and properly maintain manure controls at their open feedlot; this threatens the integrity of the regulatory program. In addition, water quality violations were documented. Therefore, a penalty of \$2,000.00 is assessed for this factor.
- c. Culpability. The Department notified Ziegmann Brothers on numerous occasions of their deficiencies and what needed to be done to avoid violations. Nevertheless, violations occurred. Moreover operators of an animal feeding facility have an obligation to be aware and comply with the law. Therefore \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Ziegmann Brothers. By signature to this Order, all rights to appeal this Order are waived.

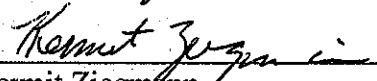
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VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


Robert Ziegmann,

Dated this 11 day of
OCTOBER, 2010.


Kermit Ziegmann

Dated this 11 day of
Oct, 2010.


Kristin Ziegmann,

Dated this 11 day of
October, 2010.


PATRICIA L. BODDY, INTERIM DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 18 day of
October, 2010.

EPA, Field Office 4, Carrie Schoenebaum; Thad Nanfito, VIII D. 1 (a) 3 (a) (b).